IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

INCOME TAX REFERENCE No 117 of 1987

For Approval and Signature:

Hon'ble MR.JUSTICE R.K.ABICHANDANI
and
Hon'ble MR.JUSTICE K.A.PUJ

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

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COMMISSIONER OF INCOME-TAX

Versus

NARENDRA R OZA,

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Appearance:

1. INCOME TAX REFERENCE No. 117 of 1987

MR MANISH R BHATT for Petitioner No. 1

MR VJ DESAI for Respondent No. 1

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CORAM : MR.JUSTICE R.K.ABICHANDANI
and
MR.JUSTICE K.A.PUJ

Date of decision: 08/01/2002

ORAL JUDGEMENT

(Per : MR.JUSTICE R.K.ABICHANDANI)

1. The Income Tax Appellate Tribunal, Ahmedabad Bench `B' has referred the following question for the opinion of this Court :

"Whether on the facts and in the circumstances of the case, the assessee is entitled to in law to the relief under section 80U of the Income Tax Act, 1961?"

2. The assessee had claimed relief under section 80U of the Income Tax Act, 1961 under which, in the case of physically handicapped persons, deduction of a sum of Rs.10,000=00 was permissible at the relevant time. The Income Tax Officer rejected the claim, but the appellate Assistant Commissioner allowed the same. The Tribunal, following the decision of Indore Bench in case of Anand Prakash Saksena v. I.T.O. reported in (1983) 3 ITD 152 and the decision rendered by it in Bhagwatiprasad P. Parikh, held that the assessee was entitled to the deduction under section 80U of the said Act and confirmed the order of the A.A.C.

3. It is pointed out to us that Bhagwatiprasad P. Parikh's case was taken to the High Court and by decision of this Court in C.I.T. v. Bhagwatiprasad P. Parikh, reported in 239 ITR 645, it was held that the fact that the person has a substantial income by itself cannot be a criteria for determining whether the disease or the disability with which the person is suffering has resulted in reducing his capacity to gainful employment. In the present case, there is no dispute over the fact that the assessee suffered from deafness to the extent that he could not hear from a distance of 2 - 3 feet even with the help of a hearing-aid. Following the ratio of the decision in C.I.T. v. Bhagwatiprasad P. Parikh, we hold that the assessee was entitled in law to the relief under section 80U of the said Act. The question referred to us is, therefore, answered in affirmative in favour of the assessee. The Reference stands disposed of accordingly with no order as to costs.

JANUARY 08, 2002 [R.K.ABICHANDANI, J.]

[K.A.PUJ, J. ]

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